

made in accordance with the rules in 43 CFR part 2.

* * * * *

§ 3602.3 Removal of improvements.

After the permit period expires, the authorized officer may grant the permittee no more than 90 days, excluding periods of inclement weather, to remove the equipment, personal property and any other improvements placed on the public lands by the permittee. Improvements such as roads, culverts and bridges may remain in place with the consent of the authorized officer. If the permittee fails to remove such equipment, personal property or any other improvements, they shall become the property of the United States but the permittee shall remain liable for the cost of removal of such equipment, personal property and any other improvements and for restoration of the site.

Subpart 3603—Unauthorized Use

§ 3603.1 Unauthorized use.

Except when authorized by sale or permit under law and the regulations of the Department of the Interior, the extraction, severance or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior is unauthorized use. Unauthorized users shall be liable for damages to the United States, and shall be subject to prosecution for such unlawful acts (see subpart 9239 of this title).

Subpart 3604—Community Pits and Common Use Areas

§ 3604.1 Non-exclusive disposal.

(a) Non-exclusive mineral material sales and free use under permit may be made from the same deposit within areas designated by the authorized officer, and consistent with other provisions under this part. These designated community pit sites or common use areas are not limited in size.

(b) The designation of a community pit site constitutes a superior right to remove the material as against any subsequent claim or entry of the lands.

(c) The designation of a common use area does not establish a superior right to remove the material as against any subsequent claim or entry of the land; however, a person authorized by permit or sale to remove mineral materials from a common use area has a superior right to remove the material as against any subsequent claim or entry on the lands.

(d) Sales from community pit sites or common use areas shall be made at fair market value. No mining or reclamation plan shall be required, but the permittee shall comply with the terms of the contract or permit to protect health and safety and prevent undue or unnecessary degradation of the public lands.

§ 3604.2 Reclamation.

(a) Permits or contracts for the extraction of mineral materials from community pits or common use areas shall not require reclamation but shall require payment of costs of reclamation, as provided in paragraph (b) of this section. However, the authorized officer may allow qualified permittees to perform interim or final reclamation, where needed, in lieu of paying reclamation charges.

(b) The reimbursement cost of reclamation shall be a proportionate share of the total estimated cost of reclamation, determined by using a ratio of the material extracted under the permit or contract to the total estimated volume of the material to be extracted from the site.

PART 3610—SALES

Subpart 3610—Mineral Material Sales

Sec.

3610.1 Procedures: General.

3610.1-1 Request for sale.

3610.1-2 Appraisal, reappraisal and measurements.

3610.1-3 Payments and termination by agreement.

3610.1-4 Refunds or credits.

3610.1-5 Performance and reclamation bonds.

3610.1-6 Assignments.

3610.1-7 Extension of time.

3610.2 Noncompetitive sales.

3610.2-1 Limitations in volume.

3610.2-2 Government programs.

3610.2-3 Federal mineral leases.

§ 3610.1

- 3610.2-4 Term of contract.
- 3610.3 Competitive sales.
- 3610.3-1 General.
- 3610.3-2 Advertising.
- 3610.3-3 Conduct of sales.
- 3610.3-4 Bid deposits.
- 3610.3-5 Contracts.
- 3610.3-6 Term of contract.

AUTHORITY: Minerals Management Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

SOURCE: 48 FR 27013, June 10, 1983, unless otherwise noted.

Subpart 3610—Mineral Material Sales

§ 3610.1 Procedures: General.

§ 3610.1-1 Request for sale.

Under the provisions of this part, the authorized officer may sell mineral materials upon receipt of a written request by any person who expresses an interest in mineral materials; or his own initiative.

§ 3610.1-2 Appraisal, reappraisal and measurements.

(a) No mineral materials shall be sold at less than fair market value as determined by appraisal.

(b) The authorized officer shall reappraise mineral materials disposed of under this part at intervals of not less than 2 years and shall adjust the contract unit price accordingly.

(c) Mineral materials may be measured by in-place volume or weight equivalent.

§ 3610.1-3 Payments and termination by agreement.

(a) Under a contract of sale for mineral materials, the permittee:

(1) Shall not remove mineral materials until advance payment is made;

(2) Shall for contract sales of \$2,000 or less, pay the full amount at execution of the contract;

(3) May, when the sale exceeds \$2,000, make installment payments of not less than \$500 or 10 percent of the total purchase price, whichever is greater and shall: (i) For non-competitive sales, pay the first installment prior to or at the time the contract is awarded; (ii) for competitive sales, pay the first installment as a deposit at the time the bid is submitted, and (iii) pay each subsequent installment for non-competi-

43 CFR Ch. II (10-1-98 Edition)

tive and competitive sales in an amount equal to the value of the mineral material removed prior to removal of the material;

(4) Shall pay the total amount of the purchase price no later than 60 days before the expiration date of the contract;

(5) Shall annually produce an amount sufficient to pay to the United States a sum of money equal to the first installment, or in lieu of such production, shall make an annual payment in the amount of the first installment. Annual payments shall be due on or before the anniversary date of the execution of the contract;

(6) Shall forfeit all monies paid when the required payments under the terms and conditions of the contract are not met. Failure to comply with the terms and conditions for payment shall constitute a breach of contract and the authorized officer may terminate the contract;

(7) Shall be required to make an annual report of production under the contract and to provide written verification of the amount of mineral materials removed upon request by the authorized officer to allow verification of payments.

(b) The permittee and the authorized officer may, by agreement, terminate the contract of sale at any time.

§ 3610.1-4 Refunds or credits.

(a) Refunds or credits may be made to the permittee:

(1) If upon expiration total payments made exceed the total value of mineral materials covered by the contract;

(2) If it is determined by the authorized officer that insufficient mineral materials existed in the sales area to fulfill the terms of the contract; or

(3) If materials paid for are unavailable as a result of termination of a contract, as provided in § 3610.1-3(b) of this title.

(b) Refunds of credits may not be made where the total payment made by a permittee does not exceed the administrative cost of processing the disposal action.

(c) Payments made in lieu of production, as provided in § 3610.1-3(a)(5), may be credited to future production, but not refunded, unless upon expiration,

Bureau of Land Management, Interior

§ 3610.2-1

the total value of payments made exceeds the total value of mineral materials covered by the contract. Payments made in lieu of production prior to termination or relinquishment of contract will not be refunded.

§ 3610.1-5 Performance and reclamation bonds.

(a) The authorized officer shall require a performance bond of not less than \$500 or 20 percent of the total contract value, whichever is greater, for contracts of \$2,000 or more, except for contract sales or permits made from community pits when a reclamation fee is paid by the permittee.

(b) The authorized officer may require a reclamation or performance bond for contract sales of less than \$2,000, but in no event shall the bond be for more than 20 percent of the total contract value.

(c) A performance and reclamation bond may be a:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department;

(2) Cash bond, with a power of attorney to the Secretary to convert such cash upon default in the performance of the terms and conditions of the contract or permit; or

(3) Negotiable Treasury bond of the United States of a par value equal to the amount of required bond, together with a power of attorney to the Secretary to sell such securities upon default.

§ 3610.1-6 Assignments.

(a) The permittee may not assign the contract, permit or any interest therein without the written approval of the authorized officer. The authorized officer shall ensure that all terms and conditions agreed upon are contained in the assignment and are assumed by the assignee.

(b) The authorized officer shall not approve any proposed assignments involving contract performances unless the assignee furnishes a performance bond as required by § 3610.1-5 of this title or obtains a written commitment from the previous surety to be bound by the assignment when approved.

(c) Upon approval of an assignment by the authorized officer, the assignee

shall be entitled to all the rights and be subject to all the obligations under the contract, and the permittee shall be released from any further liability under the contract.

§ 3610.1-7 Extension of time.

The authorized officer may grant a one-time extension not to exceed 1 year, if the permittee:

(a) Submits a written request that is received by the authorized officer no later than 30 days or earlier than 90 days prior to the expiration date of the contract; and

(b) Shows, in writing that the delay in removal of the mineral materials was due to causes beyond the control of and without fault or negligence of the permittee.

§ 3610.2 Noncompetitive sales.

§ 3610.2-1 Limitations in volume.

(a) When it is determined to be in the public interest, and where it is impracticable to obtain competition, the authorized officer may sell at not less than fair market value, without advertising or calling for bids, mineral materials not to exceed 100,000 cubic yards (or weight equivalent) in any individual sale.

(b) The authorized officer shall not approve noncompetitive sales that exceed the total aggregate of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any one individual, partnership, corporation or entity in any period of twelve consecutive calendar months.

(c) The volume limitations in paragraphs (a) and (b) of this section shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipelines System or the Alaska Natural Gas Transportation System.

(d) The volume limitations contained in paragraphs (a) and (b) of this section shall not apply where the Director determines that circumstances make it impossible to obtain competition or where, because of an emergency situation affecting public property, health

§ 3610.2-2

and safety, there is insufficient time to invite competitive bids.

[48 FR 27013, June 10, 1983, as amended at 51 FR 22079, June 18, 1986]

§ 3610.2-2 Government programs.

The authorized officer may sell mineral materials not exceeding 200,000 cubic yards (or weight equivalent) at not less than fair market value without advertising or calling for bids when:

- (a) The authorized officer determines the sale to be in the public interest; and
- (b) The materials are to be used in connection with a public works improvement program that requires urgent attention on behalf of a Federal, State or local governmental agency and that does not permit time required for advertising.

§ 3610.2-3 Federal mineral leases.

Where the materials are to be used in connection with the development of public lands under a mineral lease issued by the United States, the authorized officer may without calling for competitive bids, sell a volume of mineral materials not to exceed 200,000 cubic yards (or weight equivalent) to any one permittee in one State in any calendar year. No charge shall be made for mineral materials necessarily moved in the process of extracting minerals under Federal lease, as long as the materials remain within the boundaries of the lease and are used for lease development.

§ 3610.2-4 Term of contract.

The term for noncompetitive contracts for the sale of mineral materials shall not exceed 5 years, excluding extension and removal periods.

§ 3610.3 Competitive sales.

§ 3610.3-1 General.

(a) The authorized officer shall make sales, except those specified in subpart 3604 and § 3610.2 of this title, only after inviting competitive bids through publication and posting in conformance with § 3610.3 of this title.

(b) The authorized officer shall not hold sales sooner than 1 week after the

43 CFR Ch. II (10-1-98 Edition)

last advertisement inviting competitive bids.

§ 3610.3-2 Advertising.

(a) When offering mineral materials for sale by competitive bidding, the authorized officer:

(1) Shall advertise the sale through publication in a newspaper of general circulation in the area where the material is located, on the same day once a week for two consecutive weeks;

(2) May extend the period of a time for advertising; and

(3) Shall post a notice of sale in a conspicuous place in the office where bids are to be submitted.

(b) In the advertisement of sale, the authorized officer shall state:

(1) The location by legal description of the tract or tracts on which the material is being offered;

(2) The kind of materials being offered;

(3) The estimated quantities of materials being offered;

(4) The unit of measurement;

(5) The appraised prices;

(6) The time and place for receiving and opening of bids;

(7) The minimum deposit require;

(8) The access requirement;

(9) The method of bidding;

(10) The requirement that mining and reclamation plans shall be filed and that reclamation will be required if applicable;

(11) The bonding requirement;

(12) The location for inspection of contract terms and proposed stipulations;

(13) The office where additional information may be obtained; and

(14) Any additional information deemed necessary.

§ 3610.3-3 Conduct of sales.

(a) Bidding at competitive sales shall be by the submission of written sealed bids, oral bids or a combination of both, as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bid shall be determined by oral auction among the persons making high bids. If no oral bid is made which is higher than the sealed bids, the successful bidder shall then be

Bureau of Land Management, Interior

§ 3621.1-1

determined by lot. In oral auctions, immediately after the high bid is announced, the person offering the high bid shall confirm that bid in writing.

(b) When it is in the interest of the Government to do so, the authorized officer may reject any or all bids and may waive minor deficiencies in the bids.

§ 3610.3-4 Bid deposits.

A person making a bid to purchase mineral materials shall submit a deposit in advance of the sale.

(a) Sealed bids shall be accompanied by a deposit. At oral auctions, persons making bids shall make the deposit prior to opening of the bidding. The amount of the deposit shall be \$500 or 10 percent of the appraised value as specified in the sale advertisement, whichever is greater.

(b) Deposits may be in the form of cash, money orders, bank drafts, or cashier's or certified checks made payable to the Bureau of Land Management.

(c) The bid deposits of all persons making bids, except that of the successful bidder, shall be returned upon conclusion of the bidding.

(d) The deposit of the person making the successful bid shall be applied to the purchase price at the time the contract is signed by the authorized officer.

§ 3610.3-5 Contracts.

(a) The authorized officer may require the person making the high bid to furnish information that is necessary to determine his ability to fulfill the obligations of the contract. The contract shall be awarded by the authorized officer to the person making the highest bid, unless he is unwilling to accept the terms of the contract or unless all bids are rejected.

(b) Within 30 days after receipt of the contract, the person making the successful bid shall sign and return the contract, together with any required performance bond and mining and reclamation plan when applicable. The authorized officer may extend this period an additional 30 days upon written request of the applicant, within the first 30-day period. If the person making the successful bid fails to comply within

the first 30-day period, or an approved 30-day extension, the successful bidder shall forfeit the bid deposit as liquidated damages. The authorized officer may offer and award the contract for the amount of the high bid to the person making the next highest bid who is qualified and willing to accept the contract, upon the redeposit of the amount required under § 3610.3-4(a).

(c) The authorized officer shall make all sales on contract forms approved by the Director. The authorized officer may include in the contract such additional provisions as are deemed necessary to protect other resource values or prevent unnecessary and undue degradation of the public lands.

§ 3610.3-6 Term of contract.

The term for competitive contracts of sale for mineral materials shall not exceed 10 years, excluding extension or removal periods.

PART 3620—FREE USE

Subpart 3621—Free Use: General

Sec.

3621.1 Permits: General.

3621.1-1 Applications.

3621.1-2 Terms.

3621.1-3 Assignment.

3621.1-4 Conditions.

3621.1-5 Removal of materials by agent.

3621.1-6 Bond.

3621.1-7 Cancellation.

3621.2 Permits to governmental units and non-profit organizations.

Subpart 3622—Free Use of Petrified Wood

3622.1 Program: General.

3622.2 Procedures; permits.

3622.3 Designation of areas.

3622.4 Collection rules.

AUTHORITY: Minerals Management Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

SOURCE: 48 FR 27015, June 10, 1983, unless otherwise noted.

Subpart 3621—Free Use: General

§ 3621.1 Permits: general.

§ 3621.1-1 Applications.

An application for a free use permit shall be filed with the authorized officer on forms approved by the Director.